Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) *and* Unit Distribution of Bloomington, Inc. Case 33–CB–2873

December 31, 1991

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On a charge filed by Unit Distribution of Bloomington, Inc. (the Employer) on December 7, 1990, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 33, issued a complaint on December 27, 1990, against the Respondent, Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent), alleging that it violated Section 8(b)(1)(A) of the National Labor Relations Act. The Respondent filed a timely answer admitting in part and denying in part the allegations of the complaint. Following the Employer's filing of an amended charge against the Respondent, the General Counsel, by the Acting Regional Director for Region 33, issued an amendment to the complaint on January 11, 1991, and consolidated the amended complaint for hearing with Cases 33–CA–9245, 33–CA–9251, 33–CA–9256, and 33–CA–9257. After the complaint against the Employer was settled, Case 33–CA–2873 was severed for trial on May 22, 1991.

On June 20, 1991, the Respondent, the Employer, and counsel for the General Counsel filed with the Board General Counsel's Exhibits 1 through 4 which they agree constitute the entire record in this case.[1] The parties waived a hearing and issuance of a decision by an administrative law judge and stated their desire to submit the case directly to the Board for findings of fact, conclusions of law, and a Decision and Order. On July 29, 1991, the Board issued an order granting the request, approving the stipulation, and transferring the proceeding to the Board. Thereafter, the General Counsel and the Employer filed briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel

On the entire record in this proceeding, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Unit Distribution of Bloomington, Inc., an Illinois corporation, at all material times has been engaged in the warehousing business. During calendar year 1990, a representative period, the Employer purchased and caused to be delivered to its Normal, Illinois facility goods and materials valued in excess of $50,000 directly from sources outside the State of Illinois. Accordingly, in agreement with the stipulation of the parties, we find that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICE

A. *Facts*

On October 18, 1990, an election was conducted in Case 33–RC–3588. A majority of voting employees in the bargaining unit selected the Respondent as their collective-bargaining representative. The Employer filed objections to the election and exceptions to the Regional Director's report recommending that the objections be overruled and that the Respondent be certified. On May 21, 1991, the Board certified the Respondent as the exclusive representative of unit employees.[2]

From November 3 through December 12, 1990, employees of the Employer engaged in a strike against the Employer, supported by the Respondent. On about November 20, the Respondent's vice president, Paul Glover,[3] authored, signed, and distributed a letter to unit employees who crossed the picket line to work for the Employer. This letter stated, in relevant part, that:

> Once the National Labor Relations Board certifies the Union as the collective bargaining representative, all employees who are members of the bargaining unit—those that were eligible to vote in the election—will be required to become members of the Union under the Union security provision that will be contained in the contract—or seek employment elsewhere. A member of the Union is bound by the Constitution of the Union (Article VI, Section 5.1) and is subject to *Fines* if he/she violates the Constitution of the Union (Article VIII). Violation of a lawfully called Strike by crossing an Authorized Picket Line is violation of the Union's Constitution (Article VI, Section 8; Article VIII). Those Unit employees who continue to cross the picket line and work will become

[1] G.C. Exhs. 1–4 consist of the General Counsel's formal documents, stipulation of facts, the Respondent's November 20, 1990 letter to employees, and the Respondent's constitution.

[2] The stipulated record does not describe the bargaining unit. We note that the unit was identified in Case 33–RC–3588 as:

> All full-time and regular part-time production, maintenance, shipping and receiving employees, including all fork lift operators, material handling associates, and material expeditors (inventory control specialist) employed by the Employer at its Inbound Logistics Center located in Normal, Illinois serving the Caterpillar, Inc. customer; but excluding all office clerical employees, guards, professional employees and supervisors as defined in the Act.

[3] The complaint alleged, and the aswer admitted, that Glover is an agent of the Respondent under Sec. 2(13) of the Act.

> members of the Union and will be subject to charges, trial, and fines under the Union's Constitution.
>
> . . . .
>
> We ask you to reconsider your decision to continue to work and instead *Join Us* on the *Picket Line*. Those employees who have crossed the picket line but at this time choose to stop working and join their fellow workers *will not be subject to any fines or other disciplinary action by the Union.* [Emphasis in original.]

The bargaining unit employees to whom the November 20 letter was distributed were neither financial core members nor full members of the Respondent.

There is no collective-bargaining agreement between the Employer and the Respondent covering the bargaining unit employees. No union-security clause has been agreed to by the Respondent and the Employer and unit employees currently are under no union-security obligation.

B. *Contentions of the Parties*

The employees who crossed the picket line during the November 3 through December 12, 1990 strike were employees in the bargaining unit in which the Respondent subsequently was certified as bargaining representative. At the time of the Respondent's November 20, 1990 letter, however, these employees were not members of the Respondent. Accordingly, the General Counsel contends, the Respondent violated Section 8(b)(1)(A) by threatening to fine or otherwise discipline them in the November 20 letter. The General Counsel asserts that these threats were coercive and calculated to deter employees from exercising their statutory rights. *Mylen Iron & Aluminum Works*, 216 NLRB 865, 869–871 (1975).

The General Counsel further argues that the Respondent violated the Act by threatening to subject the nonmember employees to the requirements of its constitution prior to the existence of a contract between the Respondent and the Employer and in the absence of a union-security obligation, and by representing that the fines would be imposed retroactively after the employees were required to become members of the Respondent. *Machinists Local 4 (Boeing Co.)*, 185 NLRB 380, 382 (1970), enfd. in relevant part 459 F.2d 1143 (D.C. Cir. 1972), affd. 412 U.S. 84 (1973). Cf. *NLRB v. Allis Chalmers Co.*, 388 U.S. 175 (1967). The Genenal Counsel contends that allowing unions to discipline members retroactively for premembership conduct would undermine the statutory right of nonmember employees to cross picket lines without penalty. *Machinists Local 1414 (Neufeld Porsche-Audi)*, 270 NLRB 1330, 1336 (1984); *Carpenters Local 470 (Tacoma Boatbuilding)*, 277 NLRB 513, 514 (1985).

Finally, the General Counsel requests that the Board order the Respondent to mail the attached notice, marked ''Appendix,'' to all unit employees. The General Counsel submits that because the Respondent distributed its unlawful written threat to unit employees, the notice likewise should be individually distributed to unit employees.

The Employer contends that the Respondent's November 20 letter patently was unlawful because it was distributed to nonmembers at a time when there was no certification in effect, no bargaining in process, no collective-bargaining agreement, and no union-security clause. Accordingly, the Employer asserts that this letter unlawfully interfered with the employees' Section 7 rights to refrain from union activities. *NLRB v. Granite State Joint Board Textile Workers Union*, 409 U.S. 213 (1972).

C. *Discussion*

For the following reasons, we agree with the General Counsel and the Employer that the Respondent violated Section 8(b)(1)(A) by threatening to fine nonmember employees who had crossed its picket line.

Section 7 of the Act guarantees employees the right to ''self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing . . . and . . . *the right to refrain from any or all such activities*.'' (Emphasis added.) Under Section 7, the decision to cross a union-authorized picket line is clearly protected conduct. Notwithstanding this protection, however, the Supreme Court made clear in *NLRB v. Allis-Chalmers*, supra, that a union may lawfully fine its members for crossing the picket line during an authorized strike. This discipline is privileged because of the ''contractual'' relationship between unions and their members and because the proviso to Section 8(b)(1)(A) enables unions to ''prescribe [their] own rules with respect to the acquisition or retention of membership.'' Id.; *Machinists 405*, supra. The effect of union membership is not to eliminate employees ' Section 7 rights, but to permit unions to discipline their members for exercising those rights when that conflicts with lawful union rules. Id. at 382.

Although unions in certain circumstances may lawfully fine their members for conduct protected by Section 7 of the Act, it is well settled that unions violate Section 8(b)(1)(A) by fining or otherwise disciplining, or threatening to discipline, employees who are not their members. See, e.g., *Telephone Traffic Union Local 212 (New York Telephone)*, 278 NLRB 998, 1002 (1986); *Mylen Iron & Aluminum Works*, supra, 216 NLRB at 869–871. Thus, in the absence of a union-member relationship, the proviso to Section 8(b)(1)(A) is not applicable and unions lawfully cannot restrict employees' Section 7 rights.

Here, the nonstriking employees at whom the Respondent's November 20 letter was directed were not members of the Respondent at the time of the letter or when they crossed the picket line. Nonetheless, the Respondent offered relief from disciplinary action only to those nonstrikers who ''at this time chose to stop working . . . .'' Thus, the letter carried the unmistakable message that employees who continued to work during the strike would face union discipline, including a fine.[4] Accordingly, we find that by threatening these nonmember, bargaining unit employees with retroactive discipline for having crossed its picket line, the Respondent violated Section 8(b)(1)(A).[5]

In agreement with the General Counsel, we shall require that the ntice be mailed to all unit employees. In this regard, we note that the threatening letter was sent to all unit employees.

CONCLUSIONS OF LAW

1. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.
2. Unit Distribution of Bloomington, Inc. is an employer engaged in commerce within the meaning of Section 2(5) of the Act.
3. By threatening to fine nonmember employees retroactively because the employees had crossed its picket line, the Respondent violated Section 8(b)(1)(A).
4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act, we shall order that it cease and desist from its unlawful conduct and affirmatively inform unit employees of their Section 7 rights.

ORDER

The Respondent, Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent), Chicago, Illinois, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening to fine employees who are not its members retroactively because they had crossed the Respondent's picket line.

(b) In any like or related manner restraining or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its business offices and meeting halls copies of the attached notice marked ''Appendix.''[6] Copies of the notice, on forms provided the Regional Director for Region 33, after being signed by the Respondent's authorized representative, shall by posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Sign and mail to the Regional Director sufficient copies of the notice for posting by Unit Distribution of Bloomington, Inc., if willing, at all places where notices to employees are customarily posted.

(c) Mail a signed copy of the attached notice marked ''Appendix'' to all employees in the bargaining unit.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[4] The General Counsel has noted that there was no contract in effect containing a union-security clause. Of course, even if a union-security clause had been in effect, the bargaining unit employees would be subject to union discipline only if they were ''full'' members of the Respondent. *Carpenters Local 470 (Tacoma Boatbuilding)*, 277 NLRB 513, 515 (1985).

[5] We would not reach a contrary result even if, as represented by the Respondent in its November 20 1etter, unit employees ''will be required to become members of the Union under the Union Security provision that will be contained in the contract.'' Thus, the Respondent's disciplinary authority is limited to conduct undertaken by employees while they are union members. *Machinists Local 405*, supra, 185 NLRB at 382 fn. 2.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT restrain or coerce employees who are not our members by threatening to fine them retroactively because they had crossed our picket line.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

CHICAGO TRUCK DRIVERS, HELPERS AND WAREHOUSE WORKERS UNION (INDEPENDENT)